

JUN 24 1997

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FLOYD R. ADAMS; RICHARD G.
ADAMS; JAMES F. ADAMS;
ROBBIE N. ATKINS; WILLIAM D.
BANKER; DAVID BARTA;
MORGAN H. BEAN, JR.; BRET W.
BECHTOLD; JAMES M. BLAGG;
SHARON BLANKENSHIP; LUTHER
J. BLANTON, JR.; ALBERT
BRINKMAN; DONALD M.
BRONEC; JAMES C. BRONSON;
BILLIE J. BUCHANAN; ADRIAN
CHINN; GUY H. COLE; EARL A.
COLVER, III; BARBARA CROUSE;
DANIEL L. CROUSE; KAY L.
DALSING; JAMES R. DAVIS; JOE
DAVIS; DANIEL E. DEES; DAVID
DOWDLE; RICHARD W. DUDLEY;
RICHARD L. DUNBAR; WILLIAM
A. EAGLES; DAVID R. EDMONDS;
KENT FOERSTER; PEGGY D.
FORTIER; RONNIE E. FOSTER;
DEBRA L. GILLESPIE; JONATHAN
D. GILLESPIE; RICHARD D.
GILLESPIE; JAMES GILLILAND;
LANNY L. GIRARD; DAN GOFF;
GARY E. GOODIN; JANICE S.
GOODIN; ARTHUR T. GREEN;
RANDALL H. GREEN; DAVID R.
GWARTNEY; LAWRENCE W.
HENDERSON; FRED S.
HILDERBRANDT; LEANNA K.
HINK; DIANNA HUNSAKER;
JANICE L. JACKSON; MICHAEL D.
JACKSON; RANDALL E. JEWELL;

No. 96-3249
(D.C. No. 94-4201-RDR)
(D. Kan.)

RICHARD K. JOYCE; BRENDA S. KIRBY; M. SUE KROLL; DANIEL E. LEMASTER; DANA L. LJUNG; KATHY LYNCH; DAVID J. MALEC; STEVEN A. MARTIN; VANCE I. MCCALL; JIMMY N. MCDOUGLE; RONALD G. MCDOWELL; WILLIE B. MCFADDEN; ADRIAN J. MCKEE; JON O. MCLENDON; JOHN MERCER; RUTH I. MILLER; JOHN D. MORGAN; GREG MOSSER; MARCELLA L. NEWMAN; HARRIET PELLMAN; STEFANIE PENROD; JOHNNY H. PEREZ; JERLE REEVES; NORWOOD G. ROBINS; SHERYL D. SAWYER; ROBERT SCHEID; TERRY SCHLIEFERT; CYNTHIA D. SCHULTE; DEBRA L. SCOTT; BARRY G. SHULTZ; PATRICK J. SIMPSON; ROY SIMS, SR.; MAUREEN L. SMITH; MARGARET A. SWOPE; STEVEN TACADENA; ROBERT L. TERRY; JANICE THOMAS; JAMES THOMPSON; DAVID E. TURPIN; MARK W. UTRY; ROGER D. VINZANT; TRAVIS WARD; JACKIE L. CAREY-WATERS; GERALD L. WATERS, JR.; MICHAEL R. WEBB; RONALD W. WHITFORD; ROBERT L. WILLIAMS; SUSIE WOHLLETZ; HERBERT D. WOLFE; RICHARD E. WRIGHT; JOHN W. YEAGER; ROBERT C. ADAMS; TRACIE BERTRAND; PRISCILLA L. BOATWRIGHT; JERRY J. CHAMBERS; KEVIN CRADIC;

MICHAEL J. GUEARY; WILLIAM L. MCDONALD; CARMEN O. MOORE; FRANCES D. RALES; RICKY A. STEELE; NANCY E. WILLIAMS; PATTIE J. ADAMS; HENRY I. AGBOGA; PEGGY L. ALEXANDER; RICHARD D. ANDERSON; PERRI G. ANTHONY; TINA ANTHONY; RONALD B. ASHLEY; NORMA J. AVERY; LISA BAKER; WILLIAM F. BARRY; JACK B. BLOW; KARLA D. BROOKS; STEVEN P. BUCK; DELMER K. CARNES; ERNEST CARTMILL; KEVIN CHAMBERS; GWEN CHANDLER; TIMOTHY L. CHAPMAN; RICHARD J. COURTOT, JR.; ROBIN J. COURTOT; KEN J. COXWELL; SHIRLEY CUMMINS; ROBERT L. DANIELS, JR.; ROLLIE DAVIS, JR.; VALORIE A. DEHART; JERRY K. DIETZ; KELLY J. DRIGGERS; REBECCA L. DUNAVIN; NANCY EMERY; MICHAEL W. FELLMAN; RICKLAND O. FORD; RODNEY M. FORSLOF; ROSELYN FRANKLIN; WILLIAM F. FRIEND; JULIO GARCIA; HELGA K. GENTRY; MICHAEL A. GILMORE; BROOKE K. GOMEZ; ALLEN R. GOODWIN; RONALD D. GRIESACKER; CHERYL GULICKSON; ESTELLA HALL; HAROLD E. HARDEN; ROBERT A. HARR; RONALD HARRIS; CLARENCE HARVEY; LORI HASTINGS; TERRY D. HAUGEN; WILLA M. HAYES; DANNY D. HENDRICKS;

CHARLES R. HERMAN; PATSY L.
HERTEL; DANA J. HICKMAN;
DAVID W. HODGES; THOMAS
HOLMES; REVA R. HORTON; RICK
HUMERICKHOUSE; MARK J.
HUNT; RONALD E. HUTCHISON,
SR.; SANDRA HUTTON; WILLIAM
INGWERSON; MARK E. ISENBERG;
DWAYNE JACKSON; GERRI L.
JOHNSON; JAMES J. JOHNSON;
KEVIN M. JOHNSON; SUSAN
JOINER; JAMES K. JONES;
STEPHEN O. KERNER; DANNY
KINCANNON; DONALD H. KOCI,
JR.; THOMAS KOLDE; PAMELA E.
KRYSTOFOSKY; MICHAEL B.
LACKEY; CONSTANCE S.
LAWSON; DONALD L. LOGSDON;
MICHAEL LOGSDON; JOSEPH W.
LUTZ; JOSEPH E. MALONE;
LARRY L. MAPLE; RHEA E.
MARTIN; CAROLLE J. MAY;
FLOYD E. MAY; TONY M.
MCDONALD; LINDA K. MCNEIL;
SUSAN K. MEADOWS; EDWARD
MENAL; GLORIA MILLER; JAMES
E. MILLER; WAYNE D. MIMS;
MARGARET B. MOORE; DOROTHY
D. MORALES; THOMAS A.
MOYER; PHYLLIS M. NESBITT;
JOHN T. NEWMAN, SR.; JOAN D.
NIOCE; JAMES F. OGLE; ALICE L.
OWENS; BERNARD W.
PATTERSON; GREGORY G.
PATTERSON; JERALDINE J.
PAULICK; MARK L. PERRY;
PAMELA PETTIS; R.E. PETTIS;

ROBERT PICKET; MABEL
RAMIREZ; ROBERT RICCOMINI;
VERNON W. RICHMOND; PATRICK
B. ROBERTS; MARK F.
ROBERTSON; MERWYN ROBISON;
ELIZABETH A. SAINTZ; MARK S.
SAINTZ; PAULINE SAWYER; KENT
L. SCHMIDT; STEVE L. SCHMIDT;
STEVEN E. SCHULTE; QUANNAH
H. SCOTT; LOUISE A. SEASTROM;
DAVE W. SHIELDS; MICHAEL L.
SMOOT; DANIEL J. STEENO;
DOROTHY T. STEENO; WESLEY B.
STILLWELL; MARK E. SWOPE;
BETTY L. THOMPSON; JAMES E.
TOLBERT; LINDA TOWERY;
LESLIE M. TRAUTMAN; RONALD
D. TRAUTMAN; CAROL A. TYLER;
KELLIE M. WALKER-JOHNSON;
GENE P. WARREN, SR.; JIM D.
WARREN; KIMBERLY A.
WILHOITE; JOHNNIE WILLIAMS;
LARRY A. WILLIAMS; SALLIE D.
WILLIAMS; JOHN WINTERS;
RANDY C. WOOD; BRIAN C.
WYNNE; EDWARD E. YAGER;
KATHY BAYLESS; RONALD E.
BISHOP; DONALD R. BURGE;
ROBERT P. CAMARA; SANDRA L.
COCHRAN; FRANCES CRITH;
JOHN L. CROSSWHITE; WANDA
DANIELS; OKORONKWO EMEKA;
JUAN J. GUZMAN; AUGUST W.
JACKSON, III; JAMES A. KING;
AMY M. KINNEY; LESTER
LAWSON; KELLY A. MATTHEWS;
CONNIE MEYER; DONNA MILLER;

NANCY MOORE; PAMELA L.
ONORI; RONALD E. QUINN;
DAVID ROBLES; JANICE
SAMUELS; ALBERTA M.
SANDEFFER; ANGELA SWISHER;
ANTONIO F. TALBERT; DEBORAH
K. TAYLOR; CAROLYN
THOMPSON; RONALD TOWERY;
TRACY WILKERSON; WAYNE
WRIGHT, JR.; ELBERT L. CAUSEY;
DANNY HEDGES; BRADLEY
RUNYON; ORVILLE SIEG; DENNIS
STEPHENS; R.G. SWENSON;
WILLIAM R. BARRETT; BRUCE E.
BOND; BERNARD E. BOWER;
RONALD DESCH; VERNON
FOSTER; RICHARD H. HOWARD;
HARVEY T. MCDANIEL; HOWARD
ROLES; ROY SIMS, JR.; DONALD
E. SMALLEY; JEFFREY SMITH;
WILLIAM S. SMITH; FRED L.
WALLER, on behalf of themselves
and others similarly situated,

Plaintiffs-Appellants,

v.

STATE OF KANSAS,

Defendant-Appellee.

JACK B. BLOW; JERRY K. DIETZ;
GARY L. HERMAN; LARRY L.
MAPLE; DONALD E. SMALLEY;
FRED L. WALLER; CYNTHIA
DERRICK; RONALD DESCH;
HARVEY E. FOSDICK; DANIEL L.
YOUNG; DONALD R. BURGE;
KENT FOERSTER, on behalf of
themselves and other employees
similarly situated,

Plaintiffs-Appellants,

v.

STATE OF KANSAS,

Defendant-Appellee.

No. 96-3251
(D.C. No. 94-4215-RDR)
(D. Kan.)

ORDER AND JUDGMENT*

Before BRORBY and KELLY, Circuit Judges, and CAUTHRON,** District Judge.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** Honorable Robin J. Cauthron, District Judge, United States District Court for the Western District of Oklahoma, sitting by designation.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. These cases are therefore ordered submitted without oral argument.

In these appeals,¹ plaintiffs, present and former employees of the State of Kansas, appeal the district court's orders dismissing for lack of subject matter jurisdiction their actions against the State of Kansas under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219. The district court dismissed pursuant to Seminole Tribe of Florida v. Florida, 116 S. Ct. 1114 (1996), holding that because the FLSA was passed pursuant to the Interstate Commerce Clause and because Congress does not have authority under the Interstate Commerce Clause, U.S. Const., art. I, § 8, cl. 3, to abrogate a state's Eleventh Amendment immunity from suit, there can be no cause of action against defendant in federal court under the FLSA. See Adams v. Kansas, 934 F. Supp. 371, 372 (D. Kan. 1996); Blow v. Kansas, 929 F. Supp. 1400, 1402 (D. Kan. 1996). Plaintiffs also appeal the district court's assessment of costs against them. We affirm the dismissals and conclude we have no jurisdiction to consider plaintiffs' arguments concerning costs.

¹ Because the parties in these appeals raise the same issues on appeal and their briefs are nearly identical, these appeals are considered together.

The first issue we must consider is whether the notices of appeal adequately specify the parties appealing. The notice of appeal in No. 96-3249 has a caption stating the plaintiffs are “Floyd R. Adams, James F. Adams, and Richard G. Adams on behalf of themselves and other employees similarly situated,” while the body of the notice states “Floyd R. Adams, James F. Adams, and Richard G. Adams, et al.” appeal. Appellants’ App. at 55 (No. 96-3249). Likewise, the notice of appeal in No. 96-3251 has a caption stating the plaintiffs are “Jack Blow, Jerry K. Deitz and Gary L. Herman, on behalf of themselves and other employees similarly situated,” while the body of the notice of appeal states that “Jack Blow, Jerry K. Dietz, and Gary L. Herman, et al.” appeal. Appellants’ App. at 21 (No. 96-3251). Although a notice of appeal must specify the parties appealing by naming them in the caption or body of the notice of appeal, an attorney who represents more than one party may meet this requirement by describing the parties as “the plaintiffs A, B, et al.” Fed. R. App. P. 3(c). “An appeal will not be dismissed . . . for failure to name a party whose intent to appeal is otherwise clear from the notice.” *Id.*; see Grimsley v. MacKay, 93 F.3d 676, 678 (10th Cir. 1996); Cole v. Ruidoso Municipal Sch., 43 F.3d 1373, 1385 (10th Cir. 1994). In these cases, the notices of appeal meet the requirements of Rule 3(c), and the intent of the plaintiffs to appeal is clear. Accordingly, we conclude we have jurisdiction to consider these appeals.

Plaintiffs argue that the district court erred in dismissing these cases for lack of subject matter jurisdiction. We review dismissals for lack of subject matter jurisdiction de novo. See Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1, 89 F.3d 720, 724 (10th Cir. 1996).

Plaintiffs contentions (1) that the holding in Seminole Tribe should apply only to the facts in that case; (2) that because Congress may abrogate Eleventh Amendment immunity pursuant to the Fourteenth Amendment, there was a proper abrogation under the FLSA; and (3) that Seminole Tribe is against public policy because nearly all employees other than state employees have federally protected labor and employment law rights and state employees have no other avenues of recourse are all foreclosed by our recent decision in Aaron v. Kansas, Nos. 96-3095, 96-3096, 1997 WL 328849 (10th Cir. June 17, 1997).

Plaintiffs last argument is that the district court erred in assessing costs against them. Plaintiffs believe that they should not be required to pay costs since some plaintiffs had prevailed in a prior lawsuit, coworkers had prevailed in another lawsuit, they filed this action in good faith, and it was unforeseeable that the Supreme Court would issue the Seminole Tribe decision. We conclude we have no jurisdiction to consider this argument. Prior to filing their notices of appeal, plaintiffs filed motions to reconsider the awards of costs. The district court has not yet ruled on the motions. Until the district court does so, this court

lacks jurisdiction to consider any appeals concerning costs. Cf. Johnson v. United States, 780 F.2d 902, 910 (11th Cir. 1986) (concluding no jurisdiction to consider appeal on issue of costs where district court had not ruled on pending motion to vacate clerk's award of costs).²

The judgments of the United States District Court for the District of Kansas are AFFIRMED. The arguments concerning costs are DISMISSED for lack of jurisdiction.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

² Because “a request for costs raises issues wholly collateral to the judgment in the main cause of action,” failure to tax costs does not destroy the finality of any other otherwise appealable orders. Buchanan v. Stanships, Inc., 485 U.S. 265, 268-69 (1988).